

REMARKS

Claims 1-17, 19-25, 27, 29-37, and 40-47 are currently pending in this application.

Claims 12, 22-24, 42, and 43 are withdrawn from further examination as being drawn to a non-elected invention. Claim 17 is objected to under 37 C.F.R. § 1.75(c) as being of improper dependent form. Claims 1-11, 13-17, 19-21, 25, 27, 29-37, 40, 41, 45, and 46 are rejected under 35 U.S.C. § 112, second paragraph, for lack of clarity. Claim 45 is rejected under 35 U.S.C. § 112, first paragraph, for overbreadth and for containing subject matter that was not disclosed in the specification as filed. Claims 1-11, 13-17, 19-21, 25, 27, 29-37, 40, 41, and 44-46 are rejected under 35 U.S.C. § 112, first paragraph, for lack of enablement. Claim 47 has been deemed allowable if rewritten in independent form. By this reply, Applicants cancel claims 17, 34, 36, 40, and 45-47, amend claims 1-3, 13-16, 27, 35, 37, and 44, and address each of the Examiner's rejections below.

Support for the Amendment

Support for the amendment to claims 1-3, 13-16, 27, 35, 37, and 44 is found in the claims as originally filed and in the specification on, e.g., page 3, lines 28-31, page 4, line 5, and page 6, lines 1-3. No new matter is added by the amendment. Applicants reserve the right to pursue cancelled subject matter in this or future related applications.

Formalities

Claim 17 is objected to under 37 C.F.R. § 1.75(c) as being of improper dependent form because it fails to further limit the subject matter of previous claims 1, 2, or 3. Applicants have

cancelled claim 17. This objection should now be withdrawn.

Rejections under 35 U.S.C. § 112, second paragraph

Claims 1-11, 13-17, 19-21, 25, 27, 29-37, 40, 41, 45, and 46 are rejected under 35 U.S.C. § 112, second paragraph, for lack of clarity. The Examiner states:

Claims 1-11, 13-17, 19-21, 25, 27, 29-37, 40, and 41 remain indefinite because the claims are directed to treating any disorder of the central nervous system, but the elected invention is limited to methods of treating stroke. Thus the metes and bounds of the claims are not clearly set forth. (Final Office Action dated July 1, 2003, p. 5.)

Applicants have amended claims 1-3 and 37 to recite that the method is for treating “a subject having impaired central nervous system function resulting from a stroke.” Therefore, this rejection should be withdrawn.

Claims 2-11, 13-17, 19-21, 25, 27, 29-37, 40, 41, 45, and 46 are rejected for lack of clarity for neglecting to include a step wherein the “improvement” is effected. Applicants have amended claims 2, 3, and 37 accordingly and have cancelled claims 45 and 46. This rejection should now be withdrawn.

Claims 13-15 are rejected for lack of clarity “because although these claims are marked with the status identifier ‘Original’ the claims have been amended by adding the word ‘said’ so that the claims now read ‘wherein said the improvement’ which is not grammatically correct and renders the claim language confusing” (Advisory Action dated March 9, 2004, p. 2). Applicants note that claim 16 was also inadvertently amended by addition of the word “said” to the claim. Applicants have amended claims 13-16 to remove the word “said.” This rejection should now be withdrawn.

The Examiner also rejects claims 13-15 for lack of clarity, stating that “[a] broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired” (Advisory Action dated March 9, 2004, p. 2). The Examiner argues that because claims 13-15 recite the broad language “repair of central nervous system damage,” repair of central nervous system disease,” and “regeneration of central nervous system tissue,” respectively, while also reciting ““causing an improvement in the function of the central nervous system of a subject having impaired central nervous system function resulting from a stroke’ which is the narrower statement of the limitation,” claims 13-15 do not particularly point out and distinctly claim the subject matter regarded as the invention. Applicants have amended claims 13 and 14 to recite that the central nervous system “damage” and “disease,” respectively, were caused by the stroke. Applicants have amended claim 15 to recite that the improvement in central nervous system functioning results in “regeneration of central nervous system tissue damaged by said stroke.” Therefore, the rejection of claims 13-15 should be withdrawn.

Claim 27 is rejected for its dependency on cancelled claim 26. Claim 27 has been appropriately amended. This rejection should now be withdrawn.

Claim 39 is also rejected for lack of clarity. Claim 39 was previously cancelled in the Reply to Office Action filed on April 18, 2003. Therefore, this rejection should be withdrawn.

Finally, the Examiner objects to claim 47 for its dependence on a rejected base claim, but indicates that claim 47 would be allowable if rewritten in independent form. Applicants have cancelled claim 47. Therefore, this objection should be withdrawn.

Rejections under 35 U.S.C. § 112, first paragraph

Claim 45 is rejected under 35 U.S.C. § 112, first paragraph, for overbreadth and for containing subject matter that was not disclosed in the specification as filed. Applicants have cancelled claim 45. Therefore, this rejection can be withdrawn.

Claims 1-11, 13-17, 19-21, 25, 27, 29-37, 40, 41, and 44-46 are rejected under 35 U.S.C. § 112, first paragraph, for lack of enablement. The Examiner states:

the specification...[is] enabling for a method of causing improvement in function of the central nervous system in a mammal having a brain ischemia resulting from stroke...[by] injecting CD34^{+/−}, Lin[−] cells into an ischemic region of the mammal's brain, [but] does not reasonably provide enablement for the various methods of treating covered by the claims. (Final Office Action dated July 1, 2003, p. 4.)

Applicants respectfully disagree, but in the interest of expediting prosecution, Applicants have amended claims 1-3, 37, and 44 to the scope deemed enabled by the Examiner (see Final Office Action, p. 3). Accordingly, Applicants respectfully request that the rejection of claims 1-11, 13-17, 19-21, 25, 27, 29-37, 40, 41, and 44-46 be withdrawn.

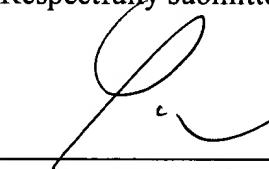
CONCLUSION

Applicants submit that the claims are in condition for allowance and such action is respectfully requested.

Enclosed is a Petition to extend the period for replying to the Office action for three months, to and including May 30, 2004, and a check in payment of the required extension fee.

If there are any additional charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,



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